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US District Court for the Middle District of TN

AUG 17 2015

) Craig Cunningham

U.S. DISTRICT COURT  
MID. DIST. TENN.

) Plaintiff, pro se

)

) v.

3:15-cv-893

CIVIL ACTION NO.

)

) National Payment Systems LLC, dba Prestige Payments, and John/Jane Does 1-5

)

) Defendants.

Plaintiff's Original Complaint

1. The Plaintiff in this case is Craig Cunningham, a natural person and was resident of Davidson County at all times relevant to the complaint, and currently has a mailing address of 5543 Edmondson Pike, ste 248, Nashville, TN 37211
2. Upon information and belief, National Payment Systems LLC is a California corporation operating from 1300 Esther St. Ste 205, Vancouver, WA 98660 and can be served via registered agent: Bradley Law, 80 Blue Ravine Road, Folsom, CA 95630.
- 3.

Jurisdiction

4. Jurisdiction of this court arises as the defendants continuous and systematic contacts within the state of Tennessee in placing numerous phone calls to consumers in the state of Tennessee as part of a robocall marketing campaign in which tens of thousands of phone calls were made to consumers across the country. Subject matter jurisdiction is apparent as the TCPA is a federal question under 28 USC 1331.
5. Venue in this District is proper as the defendants are subject to personal jurisdiction based on the continuous and systematic contacts within the forum state of Tennessee. The telephone calls which led to the violations of alleged here occurred in Tennessee. The Defendants made multiple unsolicited telephone calls to the Plaintiff and other Tennessee residents living in Tennessee.

#### **FACTUAL ALLEGATIONS**

6. In 2015, the Plaintiff received multiple automated phone calls with a pre-recorded message to the Plaintiff's cell phone, which was 615-212-9191 at the time. These calls were clearly automated and made by an automated telephone dialing system as defined by 47 USC 227(a)(1), which can store or produce telephone numbers to be called using a random or sequential number generator.
7. These calls related to credit card merchant account processing services offered by Prestige Payment services. In one call, the agent Lisa Crawford and she confirmed that the Plaintiff had been called on a dialer system on May 13, 2015.
8. Upon information and belief, the calls also contained pre-recorded messages, soliciting the Plaintiff to sign up for their merchant processing.

9. The Plaintiff is unsure how the Defendants obtained his cell phone number as he never gave it to them and never gave express or implied consent for the defendants to call his cell phone using an automated telephone dialing system or with a pre-recorded message. For the calls to be compliant, the Defendants would have had to obtained the Plaintiff's signature clearly authorizing automated/pre-recorded calls to the Plaintiff's cell phone for the calls to be permitted under the law, and the Plaintiff has signed no such document for Defendant Prestige.

10. The Plaintiff received phone calls on 5/6/2015, 1/27/2015, 1/7/15, 5/13/2015, 5/21/2015, 5/19/2015, 5/18/2015, 5/13/2015, 6/15/2015 twice, 4 times on 6/16/2016, 10/3/2015, an 9/5/2013 twice for a least 16 calls from the defendants.

11. The calls in question violated 47 USC 227(b) entitling the Plaintiff to a recover of \$1500 for making calls using an automated telephone dialing system and containing a pre-recorded message and 47 USC 227(c)(5) as codified by 47 CFR 64.1200 under the FCC's rulemaking authority entitling the Plaintiff to an additional recovery of \$1500 for violating 47 CFR 64.1200(b) 47CFR 64.1200(c), and 47 CFR 64.1200(d) by failing to have a written policy on maintaining a do-not-call list and failure to train personnel on telemarketing.

#### **CAUSES OF ACTION:**

#### **COUNT I**

##### **Violations of the Telephone Consumer Protection Act (TCPA)**

12. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

13. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing calls with pre-recorded/automated messages to the Plaintiff's cell phone that lacked the name or address of the entity placing the phone calls in violation of 47 USC(e)(5) as codified by the FCC's rulemaking under 47 CFR 64.1200(d)(4), 47 CFR 64.1200(b), and 47 CFR 64.1200(c)

**CAUSES OF ACTION:**

**COUNT II**

**Violations of the Telephone Consumer Protection Act (TCPA)**

14. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

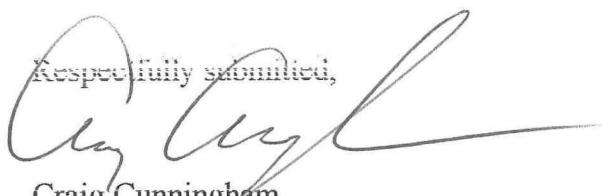
15. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing unsolicited and unwelcome telephone calls to the Plaintiff's cell phone. These phone calls also violated the TCPA by having an pre-recorded message in violation of 47 USC 227(b)

**PRAYER FOR DAMAGES AND RELIEFS**

A. WHEREFORE, Plaintiff, Cunningham, respectfully prays and requests that judgment be entered against each and every defendant for the following:

- B. Statutory damages of \$3000 for each phone call.
- C. Pre-judgment interest from the date of the phone calls.
- D. Attorney's fees for bringing this action; and
- E. Costs of bringing this action, and
- F. For such other and further relief as the Court may deem just and proper

I, Craig Cunningham, Affiant, hereby attest to and certify that the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information and belief and that a true and correct copy of the foregoing was sent to the defendants in this case.

Respectfully submitted,  
  
Craig Cunningham

Plaintiff, Pro se

Mailing address:

5543 Edmondson Pike, ste 248

Nashville, tn 37211

615-348-1977

July 28<sup>th</sup>, 2015



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